

ARTICLE 3

PENALTIES

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ARTICLE 3

PENALTIES

SEC. 1-3.00 VIOLATIONS.

- a. It shall be unlawful for any person to cause or to permit any violation of the provisions of this Code, or to fail to comply with any of the provisions of this Code. Any person violating or failing to comply with any of the provisions of this Code, except the provisions set forth in subsection (b), shall be guilty of a misdemeanor.
- b. Any person violating or failing to comply with any of the following provisions of this Code, or any provisions hereafter adopted and designated infraction, shall be guilty of an infraction:
 - (1) Chapter 2 Government and Administration
 - (i) Article 6 Hayward Air Terminal Code
 - (2) Chapter 3 Public Safety
 - (i) Article 1 Fire Prevention
 - (ii) Article 5 Dangerous Structures
 - (iii) Article 8 Hazardous Materials Storage
 - (3) Chapter 4 Public Welfare - Morals and Conduct
 - (i) Article 1 Public Nuisances, Sections 4-1.00 through 4-1.15, 4-1.62, and 4-1.65
 - (ii) Article 2 Disorderly Conduct, Sections 4-2.15, 4-2.20, and 4-2.40
 - (iii) Article 4 Animal Control Regulations, Sections 4-4.10 through 4-4.17, 4-4.20, 4-4.22, 4-4.23, and 4-4.26 through 4-4.30
 - (iv) Article 6 Theft Prevention
 - (4) Chapter 5 Sanitation and Health
 - (i) Article 1 Refuse Collection and Disposal, Sections 5-1.025, 5-1.00 through 5-1.310, 5-1.359, and 5-1.361
 - (ii) Article 3 Mobile Home Regulations
 - (iii) Article 5 Distribution or Circulation of Advertising Matter
 - (iv) Article 6 Smoking Pollution Control
 - (v) Article 7 Community Preservation and Improvement
 - (vi) Article 8 Hazardous Waste Reduction Requirements
 - (vii) Article 9 Prohibition of Scavenging
 - (5) Chapter 6 Business, Professions and Trades
 - (i) Article 3 Pawnbrokers, Secondhand Dealers, and Auctioneers, Sections 6-3.22 through 6-3.50
 - (ii) Article 4 Close-Out Sales

- (iii) Article 6 Businesses Selling Tangible Personal Property Out-of-Doors
 - (iv) Article 8 Towing Operations, Sections 6-8.13 and 6-8.20 through 6-8.32
 - (v) Article 9 Peep Show Establishments Section 6-9.23 through 6-9.38
 - (vi) Article 10 Massage Parlors and Massage Technicians Sections 6-10.30 through 6-10.36, 6-10.54, and 6-10.55
- (6) Chapter 7 Public Works
 - (i) Article 1 Property Developers - Obligations as to Streets, Driveways
 - (ii) Article 2 Disturbance of Streets, Street Trees, Maintenance and Repair of Sidewalks
- (7) Chapter 8 Finance, Revenue and Taxation
 - (i) Article 1 Business Licenses, Sections 8-1.00 and 8-1.27
- (8) Chapter 9 Building Regulations
 - (i) Article 1 Building Along Watercourses
 - (ii) Article 2 Moving Structures, Sections 9-2.36 and 9-2.65
 - (iii) Article 3 Building Abatement, Sections 9-3.203 and 9-3.401b.
 - (iv) Article 5 Residential Rental Inspections
- (9) Chapter 10 Planning, Zoning, and Subdivisions
 - (i) Article 1 Zoning Ordinance
 - (ii) Article 2 Off-Street Parking Regulations
 - (iii) Article 3 Subdivision Ordinance
 - (iv) Article 6 Airport Approach Zoning Regulations
 - (v) Article 7 Sign Regulations
 - (vi) Article 8 Grading and Clearing
- (10) Chapter 11 Public Utilities
 - (i) Article 2 Municipal Water System, Sections 11-2.28, 11-2.29, and 11-2.32
 - (ii) Article 3 Sanitary Sewer System, Sections 11-3.200 through 11-3.255 and 11-3.383

The following sections of the Wastewater Discharge Regulations, incorporated by reference as Appendix A to the Article by Section 11-3.380, also are infractions as set forth below:

- 2.01 (except for prohibitive discharges which actually cause any of the conditions listed in 2.01), 2.02 through 2.14, 4.01 through 4.06, 4.10, 4.12, 4.13, 6.01, 6.03, 6.05, 6.06
 - (iii) Article 5 Stormwater Management and Urban Runoff Control, Sections 11-5.19 through 11-5.26, 11-5.31, 11-5.37, and 11-5.38.

- c. Any person violating or failing to comply with any of the provisions of any and all regulations of the City of Hayward adopted by reference pursuant to Health and Safety Code Section 17958, or any code or regulation adopted by reference, shall be guilty of an infraction. Such regulations include, but are not limited to, the Uniform Building Code, Uniform Fire Code, Uniform Housing Code, Uniform Mechanical Code, Uniform Plumbing Code, and National Electrical Code.
- d. Whenever there exists cause to suspect a violation of any provision of this Municipal Code and other codes or regulations adopted by reference pursuant to state law, the officials responsible for enforcement of the codes or regulations or their duly authorized representatives, may enter on any site or into any structure for the purpose of investigation, provided they shall do so in a reasonable manner. No secured building shall be entered without the consent of the owner or occupant, unless a warrant is obtained. An owner or occupant or agent thereof who refuses to permit entry and investigation shall be guilty of an infraction.
- e. Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code Section 36900. After a third conviction for a violation of the same provision subsequent violations within a twelve (12) month period may be charged as a misdemeanor. Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code Section 36901.

SEC. 1-3.01 SEPARATE OFFENSES. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code, or any code or regulation adopted by reference, is committed, continued, or permitted by such person, and such person shall be punished accordingly.

SEC. 1-3.02 UNLAWFUL ACTS. Whenever this Code or any code or regulation adopted by reference makes any act or omission unlawful it shall include causing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission.

SEC. 1-3.03 NUISANCE. Any violation of this Code or any code or regulation adopted by reference shall constitute a public nuisance. In addition to any other remedies provided in this Code, the City may summarily abate such nuisance and may bring a civil suit to enjoin or abate the violation.

SEC. 1-3.04 REMEDIES CUMULATIVE. The remedies provided for herein shall be cumulative and not exclusive.

SEC. 1-3.05 LIABILITY FOR COSTS. In addition to the punishment provided by law, a violator convicted of a misdemeanor or infraction or who is issued an Administrative Citation, shall be liable for any fines and penalties assessed, and fees, costs, expenses or disbursements paid or incurred by the City or any of its contractors in connection with, the abatement of, or the prosecution of the violation.

SEC. 1-3.06 ENFORCEMENT.

- a. The following public officers and their designees shall have and are hereby vested

with the authority to enforce the provisions of this Municipal Code, and other codes adopted by reference pursuant to state law, in the manner provided by California Penal Code Section 836.5, against any person who violates these provisions:

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| (1) Chief of Police | Chapter 3, Articles 2, 3, 4, 5, 6,
Chapter 4, sections 4-1.00 through
4-1.40 of Article 1, and
Articles 2, 3, 4, 5, 6, 7, 8
Chapter 6, Articles 2, 3, 5, 8, 9, 10 |
| (2) Fire Chief | Chapter 3, Articles 1, 8
Chapter 5, Articles 1, 3
Chapter 11, Article 2
Uniform Fire Code |
| (3) Planning Director | Chapter 5, Articles 3, 5
Chapter 10 |
| (4) Director of
Public Works | Chapter 3, Article 5
Chapter 5, Article 3
Chapter 7
Chapter 9
Chapter 10
Chapter 11 |
| (5) Director of
Finance | Chapter 6, Articles 1, 4, 6
Chapter 8 |
| (6) Airport Director and
Public Works Director | Chapter 2, Article 6 |
| (7) Alameda County
Health Officer | Chapter 3, Article 7
Chapter 5, Articles 2, 3, 5 |
| (8) Community and
Economic Development
Director | Chapter 4, sections 4-1.50
through 4-1.67 of Article 1
Uniform Building Code
Uniform Housing Code
Uniform Mechanical Code
Uniform Plumbing Code
National Electrical Code |

- b. The City Manager shall have the power to designate the particular public officers and employees shall be authorized to enforce particular provisions of this Code, or any code or regulation adopted by reference, in addition to those public officers enumerated in subsection a.

SECTION. 1-3.100 FINDINGS AND PURPOSE. The City Council finds that there is a need for an alternative method of enforcement for minor violations of the Municipal Code and applicable State Codes. The City Council further finds that an appropriate method of enforcement

for minor violations is an Administrative Citation Program as authorized by Government Code Section 53069.4.

The procedures established in this Article shall be in addition to civil, criminal or other legal remedy established by law, which may be pursued to address violations of the Municipal Code or applicable State Codes.

The City Council hereby finds and determines that enforcement of the City of Hayward Municipal Code, other ordinances adopted by the City, and conditions on entitlements are matters of local concern and serve important public purposes. Consistent with its powers as a Charter City, the City of Hayward adopts this Administrative Citation Program provision in order to achieve the following goals:

- (1) To protect the public health, safety and welfare of the citizens of the City of Hayward;
- (2) To gain compliance with the Municipal Code and State Codes, Ordinances and regulations in a timely and efficient manner;
- (3) To provide for an administrative process to appeal the imposition of Administrative Citations and fines;
- (4) To provide a method to hold parties responsible when they fail or refuse to comply with the provisions of the Municipal Code, other ordinances adopted by the City, and conditions on entitlements;
- (5) To minimize the expense and delay where the sole remedy is to pursue responsible parties in the civil or criminal justice system.

Use of this Article shall be at the sole discretion of the City.

SECTION. 1-3.110 CORRECTION NOTICE AND ADMINISTRATIVE CITATIONS AUTHORITY. Upon a finding by the City official vested with the authority to enforce the various provisions of the Municipal Code, other ordinances adopted by the City, and conditions on entitlements that a violation exists, he or she may issue a Correction Notice or an Administrative Citation under the provisions of this Article.

SECTION. 1-3.120 CORRECTION NOTICE AND ADMINISTRATIVE CITATIONS SERVICE PROCEDURES. A Correction Notice will be issued to the responsible party as a warning the first time a violation occurs. If the violation is not corrected by the compliance date, an Administrative Citation will be issued for the violation(s) with appropriate fine(s).

Whenever a Correction Notice or Administrative Citation is issued, such notice may be given by either personal delivery to the person to be notified, by posting same on real property owned by the responsible party or by deposit in the United State Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his last known business or residence address as the same appears in the last equalized county assessment roll or as known to the Enforcement Officer. Service by mail shall be deemed completed at the time of deposit in the United States Mail

receptacle is made. The failure of any person to receive notice properly given shall not affect the validity of any proceedings hereunder.

The Enforcement Officer may attempt to locate and personally serve the responsible party and obtain his or her signature on the Administrative Citation. If the responsible party served refuses or fails to sign the Administrative Citation, the failure or refusal to sign shall not affect the validity of the Administrative Citation or of subsequent proceedings.

SECTION 1-3.130 CONTENTS OF NOTICES. Each Correction Notice shall contain the following information:

- a. Date, approximate time, and address or definite description of the location where the violation(s) was observed;
- b. The Code sections or conditions violated and a description of the violation(s);
- c. An order to the responsible party to correct the violations within the time specified (compliance date), and an explanation of the consequences of failure to correct the violation(s) including the fine for the violation;
- d. The name and signature of the Enforcement Officer.

Each Administrative Citation shall contain the following information:

- a. Date, approximate time, and address or definite description of the location where the violation(s) was observed;
- b. The Code sections or conditions violated and a description of the violation(s);
- c. An order to the responsible person to correct the violations within the time specified (compliance date), and an explanation of the consequences of failure to correct the violation(s) including the fine for the violation;
- d. The amount of the fine for the violation(s);
- e. An explanation of how the fine shall be paid and the time period by which it shall be paid;
- f. Identification of rights of appeal, including the time within which the citation may be contested and the place to obtain a Request For Hearing Form to contest Administrative Citation; and
- g. The name and signature of the Enforcement Officer.

SECTION 1-3.140 SATISFACTION OF ADMINISTRATIVE CITATION.

Upon receipt of a Correction Notice, the responsible party must do the following:

- a. Remedy the violation(s). If the violation(s) is corrected before the compliance date provided, no fine shall be imposed.

Upon receipt of an Administrative Citation, the responsible party must do the following:

- a. Pay the fine to the City within fifteen (15) days from the date the Administrative Citation was issued. All fines assessed shall be payable to the City of Hayward. Payment of a fine shall not excuse or discharge the failure to correct the violation(s) nor shall it bar further enforcement action by the City, and
- b. Remedy the violation(s). If the responsible person fails to correct the violation(s), subsequent Administrative Citations may be issued for the same violation(s). The amount of the fine for failure to correct the violation shall increase at a rate specified in this Article or in the Master Fee Resolution.

SECTION 1-3.150 APPEAL OF ADMINISTRATIVE CITATION. Any recipient of an Administrative Citation, may contest that there was a violation of the Municipal Code, other ordinances adopted by the City, or conditions on entitlements; or contest that he or she is the responsible party by completing a Request For Hearing Form and returning it to the City within ten (10) days from the date the citation was issued.

SECTION 1-3.160 HEARING OFFICER. The City Manager shall designate the Hearing Officer for the Administrative Citation hearing. The Hearing Officer shall not be a Hayward City employee. The employment, performance evaluation, compensation and benefits of the Hearing Officer, if any, shall not be directly or indirectly conditioned upon the amount of Administrative Citation fines upheld by the hearing officer.

SECTION 1-3.170 HEARING PROCEDURE. No hearing to contest an Administrative Citation before a Hearing Officer shall be held unless and until a Request For Hearing Form has been completed and submitted to the City.

A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) and not more than thirty (30) days from the date that the request for hearing is filed in accordance with the provisions of this chapter. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.

The hearing officer shall make a record of the hearing.

The Hearing Officer shall consider all relevant evidence including whether the violation(s) occurred and whether the responsible person has caused or maintained the violation(s) of the Municipal Code, other applicable State Codes, other ordinances adopted by the City, and conditions on entitlements on the date(s) specified in the Administrative Citation.

The responsible party contesting the Administrative Citation shall be given the opportunity to testify and present witnesses and evidence concerning the citation. The failure of any recipient of the Administrative Citation to appear at the Administrative Citation hearing without a showing of good cause shall constitute a forfeiture of any fine already paid and a failure to exhaust their administrative remedies.

The Administrative Citation and any additional documents submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents. If the Enforcement Officer submits an additional written report concerning the Administrative Citation to the Hearing Officer for consideration at the hearing, then a copy of this report also shall be served by mail on the person requesting the hearing at least five days prior to the date of the hearing.

The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the Administrative Citation prior to issuing a written decision.

SECTION 1-3.180 HEARING OFFICER'S DECISION. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision containing findings of fact and an evaluation of the sufficiency of evidence to support the finding of a violation. The written decision shall be prepared and mailed to the appellant within ten days of the conclusion of the hearing to uphold or deny of the Administrative Citation and shall list in the decision the reasons for that decision. The decision of the Hearing Officer shall be final. The recipient of the Administrative Citation shall be notified that a decision has been rendered and receive a copy of the Hearing Officer's written decision by mail.

If the Hearing Officer determines that the Administrative Citation should be upheld, then the fine amount shall be paid within five working days to the City. If the Hearing Officer determines that the Administrative Citation should be invalidated, any fine already paid to the City shall be promptly refunded.

SECTION 1-3.190 FAILURE TO PAY FINES. The failure of any person to pay the civil fines assessed by an Administrative Citation within the time specified on the citation or after an administrative hearing will result in the collection of the fine by the City. The City may pursue any available legal remedy to collect civil fines. The City may also recover its collections costs according to proof.

SECTION 1-3.200 RIGHT TO JUDICIAL REVIEW. Any person aggrieved by an administrative decision of a Hearing Officer on the Administrative Citation may obtain review of the administrative decision by filing a petition for review with the Alameda County Superior Court in accordance with the timelines and provisions as set forth in California Government Code Section 53069.4.